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|  |
| GRDC Generic Material Transfer Agreement2017 version 3GRDC PROJECT CODE: *[INSERT HERE]***MTA ID: [*if any eg Recipient Code, Year, Transfer #*]** [Insert name of the research organisation who is providing the material](Provider)[insert name of the recipient of the material](Recipient)  |

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MATERIAL TRANSFER AGREEMENT

PARTIES

[Insert name of research organisation who co-owns IP and who will transfer the Material]
(**Provider**)

AND

[insert name of the Recipient of the Materials] ACN/ABN[insert] (**Recipient**)

RECITALS

1. The Provider is a Co-Owner of the Intellectual Property in the Material and Project Data listed in Schedule 1, arising from a GRDC-funded Research Project.
2. The Research Project was undertaken with the intent that Material and Project Data developed would be made available to the Australian grains industry.
3. The Provider is in possession of the Material and Project Data and has agreed to provide them to the Recipient on the terms and conditions of this Agreement.
4. The Provider has obtained consents from all Co-Owners to transfer the Material and Project Data to the Recipient.
5. The Recipient has agreed to deal with the Material and Project Data for the Approved Purpose and on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

* 1. DEFINITIONS AND INTERPRETATION
		1. Definitions

## **Agreement** means this Material Transfer Agreement, including the Schedules and any other attachments or documents incorporated herein, as amended or replaced by agreement of the parties in writing from time to time.

## **Approved Purpose** means the approved purpose specified in Schedule 1.

**Associated Information** means the information referred to in Article 5b and in Annex 1 of the SMTA.

## **Commencement Date** means the commencement date specified in Schedule 1.

## **Commercialisation** means, in relation to the Material or Project Data:

* + 1. to manufacture, sell, hire or otherwise exploit the Material or Project Data for commercial gain;
		2. if a product or process incorporates or is derived from the Material or Project Data, to manufacture, sell, hire or otherwise use the product or process for commercial gain;
		3. if a service uses the Material or Project Data, to provide that service for commercial gain; or
		4. to license a third party to do any of those things

and **Commercialise** has a corresponding meaning.

## **Confidential Information** means all information:

* + - 1. which is indicated in writing by a Party to be confidential; or
			2. which might otherwise reasonably be regarded by either of the Parties as confidential,

## and includes the Material, Project Data and any information disclosed by the Provider to the Recipient in relation to the Material, as well as, any technical and commercial information and information the disclosure of which could prejudice the registration, exploitation or value of any Intellectual Property, including any permitted copies of such information, except for information:

* + - 1. that the Recipient can show was already known to, in the rightful possession of or independently developed by the Recipient in good faith and free of any obligation of confidence;
			2. that the Recipient can show is in the public domain otherwise than by a breach of this Agreement or other obligation of confidence; or
			3. has been independently developed or acquired by the receiving Party.

## **Co-Owner** means the entities with an ownership interest in the Material or Project Data and listed in Schedule 1.

## **Delivery Address** means the delivery address specified in the Schedule 1.

**Electronic Communication** has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

**Genetically Modified Organism (GMO)** means an organism which has been modified by gene technology, and which falls within the meaning of genetically modified organism under the *Gene Technology Act* 2000 (Cth).

## **GRDC** means the Grains Research and Development Corporation a Corporate Commonwealth entity incorporated under the *Primary Industries Research and Development Act 1989* (Cth) ABN 55 611 223 291 located at Level 4, East Building, 4 National Circuit, Barton, Australian Capital Territory 2600.

## **Improvement** means any Intellectual Property that arises from the Recipient’s use of the Material or Project Data.

## **Intellectual Property** (or **IP**) means any registered or unregistered intellectual property rights including any:

* + - 1. patents or rights concerning any discovery, invention, process, process improvement, procedure, manufacturing method, technique or information regarding the chemical or genetic composition of materials (whether patentable or not);
			2. trade marks, business names or trading styles (whether registered or not);
			3. copyright material and similar or neighbouring rights;
			4. registered or registrable designs;
			5. plant breeder rights or other proprietary information concerning genetic or biological material or engineering processes; and
			6. eligible layouts or protectable computer programs, as well as any right to seek registration of, or to take action for infringement of, any such rights.

## **Material** means the material specified in Schedule 1.

## **PGRFA under Development** means Plant Genetic Resource for Food and Agriculture under Development as defined in the SMTA.

## **Project Data** means results and information developed within the Research Project and provided to the Recipient as specified in Schedule 1, including, experimental results, genetic information, selection tools and methodologies and if the SMTA applies it also includes any Associated Information.

## **Research Project** has the meaning given in Schedule 1.

**SMTA** means the Standard Material Transfer Agreement in the form required from time to time under the International Treaty on Plant Genetic Resources for Food and Agriculture, available at: <http://www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/the-smta/en/?q=content%2Fwhat-smta>.

## **Special Condition** means any special conditions specified in Schedule 1.

## **Term** means the period of time from the Commencement Date until the Termination Date or the date the Agreement is terminated under clause 6 if terminated earlier.

## **Termination Date** means the termination date specified in Schedule 1.

**Territory** means the territory specified in Schedule 1.

* + 1. Interpretation

In this Agreement unless the context otherwise requires:

* + - 1. a reference to either Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
			2. a reference to any organisation, committee or body includes a reference to any successor of that organisation, committee or body;
			3. a reference to any document or agreement includes a reference to that document or agreement as properly amended, novated, supplemented, varied or replaced from time to time;
			4. "includes" or "including" are not words of limitation;
			5. all monetary amounts are in Australian currency;
			6. where any Party is constituted by more than one legal entity, they will be, unless otherwise expressly stated, jointly and severally liable in respect of all obligations arising under this Agreement and jointly entitled to enjoy any rights granted by this Agreement;
			7. it is to be interpreted in accordance with the rules for the interpretation of Acts set out in the *Acts Interpretation Act 1901* (Cth);
			8. all references to Minister are to be interpreted in accordance with the relevant Commonwealth, State or Territory interpretation of acts legislation; and
			9. all references to a Department, Government agency and statutory bodies are to be interpreted in accordance with the applicable Commonwealth, State or Territory interpretation of acts legislation.
		1. Headings

In this Agreement, headings are for convenience only and do not affect interpretation.

* + 1. Constitution of agreement and inconsistency
			1. This Agreement will be constituted by:
				1. Schedule 2 - the SMTA (if applicable);
				2. any Special Conditions;
				3. these terms;
				4. Schedule 1 (other than the Special Conditions).
			2. If there is any inconsistency amongst the provisions in any of the documents listed in (i) to (iv) above, the provision in the earlier listed document will prevail over the provision in the later listed document to the extent of the inconsistency.
	1. Transfer
		1. Transfer
			1. The Provider represents and warrants that it has obtained the necessary approval from the other Co-Owners for the transfer of the Material and Project Data to the Recipient under the terms of this Agreement.
			2. The Provider will make the Material and Project Data available to the Recipient at the Delivery Address, subject to the terms of this Agreement.
		2. Recipient requirements

The Recipient must:

* + - 1. reimburse the Provider within 30 days of receiving an invoice from the Provider for any reasonable costs incurred by the Provider in transferring the Material and Project Data to the Recipient;
			2. use the Material and Project Data in the Territory and solely for the Approved Purpose;
			3. not Commercialise the Material or Project Data;
			4. not provide the Material or Project Data to any third party without the written approval of the Co-Owners;
			5. not seek any form of registration of Intellectual Property or other statutory protection of the Material or Project Data;
			6. comply with all applicable laws and codes of conduct in relation to use of the Material or Project Data, including appropriate industry standards for the handling, management and disposal of the Material or Project Data (if relevant);
			7. obtain all ethical or legal clearances, consents or authorisations that are necessary or desirable to use the Material or Project Data for the Approved Purpose;
			8. co-operate with the Provider and act reasonably in connection with this Agreement and receipt, use and handling of the Material or Project Data; and
			9. for the term of this Agreement, provide the report in accordance with clause 7.2.
		1. Recipient Acknowledgement

The Recipient acknowledges and agrees that the Co-Owners, at all times retain full ownership and title to the Intellectual Property rights and Confidential Information in relation to the Material and Project Data provided to the Recipient under this Agreement; and

* + 1. Application of SMTA

If the Material is PGRFA under Development, the Parties agree that:

* + - 1. the terms and conditions of the SMTA apply in relation to that Material in addition to this Agreement;
			2. a copy of the SMTA is attached at Schedule 2 to this Agreement.
	1. WARRANTIES
		1. Provider warranties

The Provider warrants that, to the best of its knowledge, having made all reasonable enquiries, subject to any restrictions specified in Schedule 1:

1. there are no impediments or restrictions on the use of the Material or Project Data for the Approved Purpose; and
2. the Material does not contain any Genetically Modified material.
	* 1. Exclusion of warranties with respect to Material and Project Data

The Recipient acknowledges and agrees that subject to clause 3.1:

* + - 1. the Material and Project Data is experimental in nature, and may contain inherent defects and deficiencies;
			2. the Co-Owners make no representation and give no warranty that the Material or Project Data is fit for any particular purpose;
			3. the Co-Owners make no representation and give no warranty that the use of the Material or Project Data by the Recipient will not infringe the Intellectual Property or other rights of any third party; and
			4. the Material and Project Data is provided on an “as is” basis.
		1. Reliance warranty

The Recipient represents and warrants, and it is a condition of this Agreement that the Recipient did not rely on any representation made to the Recipient by any Co-Owner prior to entry into this Agreement.

* + 1. Rights on trust

The Provider holds the rights of the Co-Owners under this clause 3 on trust and may enforce those rights on behalf of the Co-Owners.

* 1. INTELLECTUAL PROPERTY
		1. Improvements
			1. The Recipient must notify the Provider in writing of any Improvements upon their creation.
			2. If requested by the Provider in writing, the Recipient must provide a report to the Provider within 30 days of the request, detailing any Improvements created.
			3. Unless otherwise specified in Schedule 1, the Parties agree that any Improvements will be owned by the Co-Owners and this Agreement will apply to Improvements in the same way it applies to Material and Project Data.

(d) The Parties must execute and do all things necessary to give effect to the intention of the Parties and its obligations as set out in clause 4.1(c).

* 1. CONFIDENTIALITY
		1. Confidential treatment

(a) Each Party must, subject to this Agreement, treat as confidential the Confidential Information disclosed to it by the other Party.

(b) The Parties may only use Confidential Information for the purposes of fulfilling its obligations under this Agreement and for the Approved Purpose and must:

* + - * 1. keep Confidential Information secure and confidential at all times;
				2. not disclose Confidential Information to another person unless, that person:

is legally bound to keep Confidential Information confidential; and

has a *need to know* that information for the Approved Purpose;

* + - * 1. not copy Confidential Information other than as necessary for the Approved Purpose; and
				2. promptly notify the other Party if it becomes aware of, or suspects any unauthorised copying, use or disclosure of any Confidential Information.
		1. Exceptions

Where a Party is required by a court, governmental or administrative authority or any parliamentary authority or by applicable law or regulation to disclose Confidential Information of another Party:

* + - * 1. the disclosing Party must promptly notify the other Party and consult with it about the form and content of any disclosure required; and
				2. only disclose that part of the Confidential Information as is necessary to comply with the relevant requirements.
	1. TERMINATION
		+ 1. This agreement will commence on the Commencement Date and will continue for the Term.
			2. If either Party:
				1. commits a breach of this Agreement which is not capable of remedy; or
				2. commits a remediable breach of this Agreement which is not remedied within 14 days after receiving notice of the breach requiring rectification of the breach; or
				3. engages in any negligent act or omission, or engages in any wilful misconduct, in relation to this Agreement,

### then the other Party may immediately terminate this Agreement by notice in writing to the defaulting Party.

* + - 1. The Parties agree and acknowledge that if at any time during the Term of this Agreement, a Co-Owner withdraws its consent provided to the Provider to transfer and permit the Recipient to use the Material or Project Data under this Agreement, either Party may by written notice to the other Party immediately terminate this Agreement.
			2. The Parties agree and acknowledge that at any time during the Term of this Agreement, the Recipient may by written notice to the Provider immediately terminate this Agreement.
			3. On expiry or termination of this Agreement:
				1. accrued rights or remedies of a party are not affected;
				2. the Recipient must immediately cease using all Material, Project Data and Improvements that remain Confidential; and
				3. the Recipient must destroy or deliver to the Provider (at the direction of the Provider), all Material, Project Data and Improvements that remain Confidential.
	1. PUBLICATION AND REPORTING

7.1 **Publication of research results**

* + - 1. Subject to compliance with clause 7.1(b), the Recipient may publish any results relating to its use of the Material or Project Data under this Agreement.
			2. Prior to submitting any results relating to the Material or Project Data for publication, the Recipient must:
1. provide a copy of the proposed publication to the Provider at least 30 days prior to the intended submission date; and
2. amend the proposed publication or delay submission and publication if the Provider notifies the Recipient in writing that a potential Intellectual Property application may be prejudiced or Confidential Information would be disclosed by that publication.

(c) If the Recipient is permitted to publish under clause 7.1(b), the Recipient must acknowledge the Co-Owners, and acknowledge any staff notified by the Provider as being involved in the development of the Material and/or Project Data.

* + 1. Reporting

The Recipient must provide the Co-Owners a report in the manner, form and timeframe as set out in Schedule 1.

* 1. LIMITATION OF LIABILITY

A Co-Owner is not liable to the Recipient for any loss or damage suffered or incurred by the Recipient however caused (except to the extent that the loss or damage was caused by the negligence, wilful misconduct or omission of that Co-Owner) in connection with the Recipient’s use or possession of the Material or Project Data.

* 1. INDEMNITY

9.1 The Recipient is liable for, and indemnifies the Provider (including for and on behalf of the Co-Owners) from and against, all loss or damage suffered or incurred by the Co-Owners however caused, including but not limited to:

* + - 1. any breach of this Agreement by the Recipient;
			2. any negligent act or omission, or any wilful misconduct, of the Recipient;
			3. use or possession of the Material or Project Data by the Recipient; or
			4. any claim or allegation that the Recipient’s use of the Material or Project Data infringes the Intellectual Property or other rights of any third party.
		1. The Provider holds the rights of the Co-Owners under this clause 9 on trust and may enforce those rights on behalf of the Co-Owners.
	1. NOTICES
		1. Writing

All notices or communications given under this Agreement must be in writing, must be signed by the Party giving the notice and must be delivered, sent by pre-paid post or transmitted by facsimile or Electronic Communication to the relevant other Party or Co-Owner.

* + 1. Address

All notices or communications to be given to a Party or Co-Owner under this Agreement may be sent to the address of that Party or Co-Owner set out in Schedule 1, or such other address as may be advised by that Party in writing from time to time. Notices and communications must be addressed for the attention of the receiving Party’s authorised representative set out in Schedule 1.

* + 1. Receipt of notice

A notice given in accordance with this clause is taken to be received:

* + - 1. if hand delivered, on delivery;
			2. if sent by pre-paid post, 5 business days after the date of posting;
			3. if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless the recipient advises the sender within one business day that the facsimile was illegible or not fully received; or
			4. if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but any notice that would be deemed to have been received on a non-business day, will instead be deemed received on the next business day. For the purpose of this clause, reference to a “business day” means Monday to Friday (excluding public holidays) in the place where the recipient of the notice resides as determined by the address of that Party or Co-Owner.

* 1. DISPUTE RESOLUTION

11.1 Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (Dispute) must be dealt with in accordance with this clause.

11.2 A Party claiming that there is a Dispute must notify the other Party in writing and give details of that Dispute to the other Party.

11.3 If the Dispute is not resolved within 90 days from the date that the written notice of the Dispute is received, then the Dispute must be submitted to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules. The mediation must be administered by the Resolution Institute.

11.4 If the Dispute cannot be resolved within 90 days (unless this period is extended by our mutual agreement in writing) from the date it is submitted for mediation, then either party is entitled to commence proceedings in a court of appropriate jurisdiction.

11.5 Nothing in this clause 11 will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction.

* 1. GENERAL
		1. Further assurances

Each party must do all things necessary or desirable to give effect to the provisions of this Agreement including by signing all documents and performing all acts.

* + 1. Entire agreement

This Agreement:

* + - 1. contains the entire agreement of the Parties; and
			2. supersedes any and all prior representations, conduct and agreements,

with respect to its subject matter, except to the extent that any express guarantees have been given by a party as contemplated by section 59 of the *Australian Consumer Law* in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

* + 1. Costs

Each party is responsible for its own costs of entering into and performing this Agreement.

* + 1. Jurisdiction

This Agreement is governed by the laws in force in the Jurisdiction in Schedule 1 and the Parties submit to the non-exclusive jurisdiction of the courts of that Jurisdiction and any courts that may hear appeals from those courts.

* + 1. Severability

To the extent that any portion of this Agreement is void or otherwise unenforceable then that portion will be severed and this Agreement will be construed as if the severable portion had never existed.

* + 1. No agency

This Agreement does not create a relationship of employment, trust, agency or partnership between the Parties.

* + 1. Waiver

A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

* + 1. Assignment

(a) Subject to clause 11.8(b), neither Party may assign or otherwise deal with any of its rights under this Agreement, without the prior written consent of the other (which consent must not be unreasonably withheld or delayed).

(b) The Recipient acknowledges and agrees that the Provider may transfer its rights and obligations under this Agreement to one or more Co-owners by written notice to the Recipient.

* + 1. Discretion

Unless otherwise expressly contemplated, where a provision of this Agreement contemplates that a party may exercise its discretion then that party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.

* + 1. Counterparts
1. This Agreement will be validly executed if signed in any number of counterparts and the counterparts taken together will constitute one agreement.
2. Executed counterparts of this Agreement may be exchanged by facsimile, email or other means of Electronic Communication.
	* 1. Survival

Clauses 2.3, 2.4, 3, 4, 5, 6, 7, 8, 9, 10 and 11 survive expiry or termination of the Agreement.

EXECUTION PAGE

**EXECUTED BY THE PARTIES AS AN AGREEMENT**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the**[INSERT NAME OF THE PROVIDER]**by a duly authorised delegate, in the presence of |  |  |
|  |
| Signature of witness |  | Signature of delegate |
| Name of witness (print) |  | Name of delegate (print) |

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of**[INSERT FULL LEGAL NAME of THE RECIPIENT]** by its duly authorised representative\* in the presence of:  |  |  |
| Signature of witness |  | Signature of authorised representative\* |
| Name of witness (print) |  | Name of authorised representative (print) |
| Title of witness (print) |  | Title of authorised representative (print) |

***\*By signing this agreement, the authorised representative represents and warrants that he/she is duly authorised to execute this document on behalf of the Recipient.***

1.

INFORMATION TABLE

|  |  |  |
| --- | --- | --- |
| 1 | Research Project  | The Project title *[insert name and number of Project]* under the GRDC’s research agreement dated *[insert date]* |
| 2 | Co-Owners | ***[insert name of Provider],*** GRDC***[List other co-owners of the Material]***  |
| 3 | Approved Purpose | ***[Provide detailed description of what the Recipient can do with the Material and Project Data, including whether the use is for Research Purposes or Evaluation of the outputs]*** |
| 4 | Restrictions | ***[Specify any restrictions on the use of the Material or Project Data]*** |
| 5 | Territory | Australia |
| 6 | Commencement Date |  |
| 7 | Termination Date | ***[note that the Termination Date should be a date that is after the date the last Report is due]*** |
| 8 | Material and Project Data | ***[Insert detailed and accurate description of the Material and Project Data being transferred to the Recipient]*** |
| 9 | Reports | ***[Insert Reporting requirements, including report content, frequency and due dates]*** |
| 10 | Recipient Delivery Address |  |
| 11 | SMTA applies to the Material (see clause 2.4 and Schedule 2) | ***[Yes or No]*** |
| 12 | Jurisdiction | ***[Insert the applicable jurisdiction]*** |
| 13 | Address for Notices | ***[insert name of Recipient, authorised representative and address for notices]******[insert name of Provider, authorised representative and address for notices]***GRDC, GRDCApprovedMTA@grdc.com.au***[List other co-owners of the Material, contact name and address for notices]*** |
| 14 | Special Conditions  |  |

COPY OF SMTA IF APPLICABLE